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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

CASE NO. 20-md-02924-ROSENBERG

IN RE: ZANTAC (RANITIDINE) .
PRODUCTS LIABILITY . West Palm Beach, FL
LITIGATION. . March 10, 2021

DISCOVERY STATUS CONFERENCE (through Zoom)
BEFORE THE HONORABLE ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE and
BRUCE REINHART
UNITED STATES MAGISTRATE JUDGE

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1 *THE COURT:* Okay. Hello, everyone, good afternoon. I
2 think we have reached the noon hour. We are here for a
3 discovery conference in the MDL, Zantac.

4 We have had a number of discovery proceedings before
5 Judge Reinhart over the last couple of weeks, so we have been
6 able to see some of you, but not all of you, or Judge Reinhart,
7 I should say, has seen some of you, but not all of you.

8 As I have mentioned on many occasions, among the
9 purposes of having the regular discovery conferences and status
10 conferences is not only to benefit Judge Reinhart and I in
11 keeping up-to-date on all of the matters that are impacting the
12 litigation, but also to ensure that all participants in the
13 litigation have the ability to be kept apprised.

14 Maybe some of you were on some of the discovery
15 hearings before Judge Reinhart, you were listening in. To the
16 extent that you weren't, this is an opportunity to get kind of
17 a high-level overview of what is happening in the context of
18 discovery in the MDL hearing.

19 We are obviously not going to be repeating the matters
20 that were brought before Judge Reinhart. Those were in the
21 nature of disputes, they were brought pursuant to the pretrial
22 order 32 that provides the dispute procedure, which I know has
23 raised on occasion questions about how exactly that PTO works.

24 I think it is appropriate that maybe one of the first
25 things we start off with this afternoon in the conference would

1 be perhaps for Judge Reinhart, who has presided over these
2 hearings, to be able articulate again in clear terms what he
3 envisions in his role as the magistrate judge hearing a number
4 of these disputes that come to him through PTO 32.

5 So, let's begin the conference. Let me turn it over
6 to Judge Reinhart so he can say hello and any welcoming
7 comments. And then perhaps educating everyone, Judge Reinhart,
8 on your view of PTO 32 for the purpose of aiding the parties.

9 *THE MAGISTRATE JUDGE:* Thank you, Judge, I appreciate
10 that. For the record, Bruce Reinhart, Magistrate Judge. That
11 is for you, Pauline. Good afternoon, everybody.

12 I want to echo what Judge Rosenberg said. I have
13 gotten to see a number of you over the last month, but I think
14 it is very important that everybody who is involved in the
15 litigation understand the procedures that we are using, and I
16 know at a couple of those discovery hearings I had the
17 opportunity to answer some specific questions and to educate
18 the people who happened to be in front of me that day about how
19 a PTO 32 in particular is supposed to work.

20 But I know not everybody who is a party to this
21 litigation was present for those hearings, so I am going to
22 take Judge Rosenberg's suggestion and go back over those, the
23 advice and guidance I gave on the other proceedings, and also
24 give you some background as to what PTO 32 is intended to do,
25 where it comes from, and maybe that will help inform you as you

1 have questions.

2 Let me start with this. The purpose of PTO 32 is
3 actually to make your life easier, not harder. I know it is a
4 little different than what a lot of people are accustomed to in
5 their day-to-day practice. In your day-to-day practice I am
6 sure many of you are accustomed to procedures where, if you
7 have a discovery dispute, you would file a motion to compel or
8 a motion for protective order, there would be a response,
9 possibly a reply, and then the magistrate judge would either
10 have an argument or a hearing, or might rule on the papers.

11 PTO 32 is meant to mirror that procedure without all
12 of the procedural steps that are required. The idea being if a
13 motion is filed, by the time the motion is drafted and filed,
14 the Court waits to get a response, then perhaps get a reply,
15 then figures out how to schedule a hearing, then has a hearing
16 and then rules on it weeks will have go by. The purpose of PTO
17 32 is to streamline that and get you in front of the Court and
18 get you a ruling much sooner. Let me start with that.

19 I have gotten a number of questions directly and
20 through the special master about what can we raise in PTO 32.
21 My view is you can raise anything in PTO 32 that you otherwise
22 could raise in a motion to compel or a motion for protective
23 order.

24 PTO 32 encompasses any issues that arise in Federal
25 Rules 26 through 37. So, if you have a dispute under one of

1 those rules, you can raise it under PTO 32, just like you could
2 in a motion to compel or a motion for protective order.

3 What you can't raise is anything that you couldn't
4 raise in a motion to compel or a motion for protective order,
5 which is just, hi, Judge, we think you just need to know
6 something, but we are really not asking you to do anything. If
7 you are not asking me for a remedy there is really nothing I
8 can do or Judge Rosenberg can do, and so you really shouldn't
9 be raising and can't be raising those under PTO 32.

10 I will get to this in a second, but one of the things
11 that I require in the submissions under PTO 32 is, what is the
12 specific remedy that you want?

13 That is for a couple of reasons. One is, it helps
14 focus your discussions with the opposing party, perhaps focuses
15 your discussions with the special master, and helps the special
16 master guide you to, maybe that is not the remedy you want, or
17 maybe there is an alternate remedy that you would accept.

18 It is always important in dealing with discovery
19 disputes that we have the idea in mind that when you come to
20 the Court you are asking the Court to order somebody to do
21 something. So, that is why the remedy that you are asking for
22 is so important.

23 The corollary to that is, once you have gone through
24 the whole PTO 32 process and you are before the Court, the
25 Court is not going to play the role of mediator or negotiator.

1 The Court presumes that by the time you get here you have
2 worked carefully with each other, you have worked carefully
3 with the special master, and you have not been able to resolve
4 your dispute through negotiation. So, the Court is simply
5 going to pick one of the remedies that is presented to it.

6 So, don't come in front of me, please, on a PTO 32 and
7 start negotiating with me or asking me to negotiate on your
8 behalf, or for me to redline somebody else's pleadings or
9 somebody else's discovery. Tell me what you want and I will
10 either give it to you or I won't, but I am not going to be here
11 to negotiate. My expectation is that process has run its
12 course long before you get to me.

13 So, that is what you can raise in a PTO 32. Let me
14 talk to you kind of from beginning to end about what the
15 process entails.

16 So, the first thing is, you obviously have some
17 dispute that one party or the other foresees down the road
18 possibly ending up in front of the Court. Obviously, you need
19 to communicate that to the other side so everybody understands
20 what it is you are disagreeing about. Often times I see, and I
21 know Judge Rosenberg also sees in other matters, parties come
22 before us and by the time we are done with our hearing the
23 parties realize they don't really understand what they are
24 fighting about, or what party A thinks is the dispute is not
25 what party B thinks is the dispute.

1 It's really important, as early on as you can, just to
2 make sure you are agreeing about what you are disagreeing
3 about to help frame your discussion. Once there is something
4 that everybody agrees you are disagreeing about, you can notify
5 the Court that you need a date. You don't have to tell me what
6 you are disagreeing about. You might be disagreeing about four
7 or five things. All you need to tell me at that point is we
8 need a date and here is how much time we need and here is how
9 soon we would like to get in to see you. I will try to
10 accommodate you as best I can.

11 It may be that between the time you notify me and the
12 date we've set that either on your own or through working with
13 the special master you have resolved all of your issues or some
14 of your issues. I don't need to know that either. All I need
15 to know is, about 48 hours before the hearing, I need you to
16 tell me what it is you want me to rule on, and you do that in
17 the form of your joint memo that you submit.

18 So, the idea is that, first, you agree what you are
19 disagreeing about, everybody is on notice these are the
20 possible issues that we want to bring before the Court. One
21 side may say that doesn't have to go before the Court, but at
22 least you know what you are fighting about. You talk to the
23 special master, you talk to each other, and whatever is
24 unresolved, you draft a joint memo together and you submit that
25 to the Court.

1 Let me talk to you about the memo. The memo has a
2 page limit, it has a page limit for a reason.

3 Because the disputes that arise under PTO 32 are
4 generally going to be confined to Rules 26 through 37, for
5 better or for worse, I spend the large chunk of my life living
6 between Rules 26 and 37. I am confident that if it is a mind
7 run standard discovery dispute that involves application of the
8 principles embodied in those rules, I don't need briefing on
9 the law. I am pretty comfortable I know what the law is, so
10 you don't need to brief that.

11 What I need to do is in your joint memo is simply
12 frame issues, we think their interrogatories are overbroad, we
13 think this is disproportionate, we think it is unduly
14 burdensome, here is why, we disagree, here is why, and that is
15 all I need. I don't need case citations, I don't need a long
16 advocacy piece. I just need you to frame the issues.

17 Now, if it is a unique situation or if there is a case
18 directly on point and you want to cite me to a case to two, you
19 are certainly not precluded from doing that. I don't need a
20 lengthy boilerplate memo, I don't need a big windup about how
21 discovery works or anything like that. Save the pages, let's
22 get to the point.

23 Then, what will happen at the hearing is, I will use
24 your submission as the agenda for the hearing, and that is how
25 we make sure that we cover all the issues that people wanted to

1 raise, everybody gets heard at the hearing, everybody gets to
2 make in full their legal arguments, they get a full opportunity
3 to introduce any facts they want to introduce.

4 Again, you don't necessarily have to fully flesh out
5 your legal argument in the memorandum. I will give you an
6 opportunity on the record to make that argument. The
7 memorandum is really just a table-setting exercise.

8 Now, the memorandum has a page limit, the attachments
9 to the memorandum do not. So, if there is a dispute about
10 particular requests for production, or interrogatories, or
11 requests for admission, it would be helpful if you would
12 append -- this is in addition to your limited pages, this is an
13 add-on. Give me a copy of the relevant pleading, here is what
14 the interrogatory asks for, here was their objection, here was
15 their response. We can all work off of that. That is
16 perfectly fine.

17 If you are arguing undue burden and you want to append
18 an affidavit, or for some other reason, for proportionality you
19 want to append affidavits or other evidence, you can certainly
20 do that. That does not count against your pages, those are
21 just exhibits to the joint memo.

22 Also, at the hearing if you think you want to
23 introduce live evidence, I am here to hear evidence. So, if
24 you want to introduce live evidence at the hearing just
25 indicate in the memo the Defendant X anticipates they would

1 need 25 minutes for witness testimony, or half an hour for
2 witness testimony in addition to argument, and I will let you
3 make your record.

4 I don't want anyone to feel like you are being somehow
5 cheated by the fact that the joint memorandum has a page limit.
6 It does have a page limit, but you are not limited in your
7 ability to fully address and raise any legal or factual issues
8 because my number one goal is, I want to get the ruling right.

9 My number two goal is, if somebody thinks I didn't get
10 the ruling right and they want to take a review to Judge
11 Rosenberg, she needs to have a fully developed record, and I
12 will give everyone a chance to fully develop the record. This
13 is not a game of gotcha where we're trying to trick somebody
14 into waiving an argument that they otherwise want to make and
15 they feel like that are going to run out of pages.

16 That is the other thing. I don't want to encourage
17 this, but in rare situations where maybe there are a lot of
18 issues to be raised or maybe there is a good reason to go
19 beyond the page limit, I am open to you requesting that, and I
20 am open to granting it if I think there is a good reason for
21 it, so just let me know.

22 That is the joint memo. That is how the memo is
23 supposed to work. That is the purpose of the memo.

24 I got a question I think the other day about who has
25 to go first, who has to show their hand first by doing the

1 first draft of the memo? I am going to leave that to you.
2 Depending on the dispute, depending on which party is really
3 the party that is raising the issue, it might be incumbent on
4 that party to try to go first.

5 I will tell you in my own personal practice, when I
6 had a practice, I always liked to go first because it gave me a
7 chance to frame the issue, and then the other party was
8 reacting to my framing of the issue, but I am not going to
9 order the Plaintiff always has to go first, or a Defendant has
10 to go first. I think the parties should be able to work that
11 out.

12 You can get in quickly under PTO 32 as well. I want
13 to make sure the other side has fair notice of what is coming
14 before me, and that includes -- anything you are going to
15 append to the memo, by the way, I would expect has been shown
16 to the opposing party during the meet and conferral process.
17 So there is a no surprises rule. You can append anything you
18 want to, but I want to make sure the other side saw it and had
19 a fair chance to think about it and react to it.

20 If you really need to get in quickly -- and I have
21 gotten people in in 48 hours, I have gotten people in in 24
22 hours. We don't like to do it as quickly as that if we don't
23 have to, but if we have to do it, we will absolutely do that.

24 So, I think those are the issues I wanted to touch on
25 on PTO 32. I hope that gives you some perspective on what I am

1 trying to accomplish, the scope, the process of how it works.

2 I will say one last thing on this topic. I sense we
3 are moving into a new phase of the discovery in this case,
4 probably a phase that I would consider more individualized. I
5 think up until now, we have been dealing with global issues,
6 cross-cutting issues. You have been great as a collective body
7 in negotiating PTOs and other things that have allowed the
8 process to get this far.

9 We have reached a point, I think, where many of the
10 Defendants are not similarly situated, many of the requests are
11 not uniformly applied across Defendants. I want to make clear
12 that any Defendant, or any Plaintiff, who feels they have an
13 individual issue is free to bring that individual issue before
14 me on a PTO 32. If that means I end up having multiple issues
15 on related claims, that is perfectly fine. I am happy to do
16 that.

17 I have said this before, my rulings on one issue as to
18 one set of parties does not bind other parties as a matter of
19 res judicata; however, I try to be careful in my rulings to
20 articulate on the record my thinking so that perhaps, although
21 it is not strictly res judicata, you might infer that I am
22 probably going to rule a particular way given the thought
23 process and the methodology that I apply, given -- always
24 reserving the right, of course, to try to distinguish your case
25 from the case that I ruled on.

1 I did want that to be clear. I don't want anyone to
2 feel that the courthouse door is closed to them, or because
3 they happen to have a small issue they can't get in quickly on
4 a PTO 32. The courtroom door is wide open.

5 With that, let me give this back to Judge Rosenberg
6 for one second if she has any questions or any of the parties
7 have any questions they wanted to raise with me directly.

8 *THE COURT:* Thank you so much, Judge Reinhart. That
9 is exactly what I was going to ask. I didn't know whether
10 representatives from the Plaintiffs, Ms. Finken, brands, Ms.
11 Sharpe, from the generics, distributors, Mr. Kaplan, retailers,
12 Ms. Johnston, if you had any questions or comments. If you
13 want to take a moment to turn your video on.

14 If you speak, state your name for the record for
15 Ms. Stipes, but it would be helpful to allow you to get as much
16 clarity as you need on behalf of your respective constituency
17 now that we are addressing this topic.

18 Please, let me let you be heard if you would like to.

19 *MS. FINKEN:* Thank you, your Honor, Tracy Finken on
20 behalf of Plaintiffs. We don't have any questions. I
21 appreciate your Honor asking, though, thanks.

22 *THE COURT:* Okay.

23 *MS. SHARPE:* Good afternoon, your honor, Paige Sharpe
24 for Sanofi and speaking on behalf of the brands.

25 I did have a couple of questions -- is that me? I am

1 hearing a lot of feedback. Sorry about that.

2 I did have a couple of questions related to the
3 process for submitting PTO 32 submissions to the Court, and I
4 understand that at the last discovery conference -- maybe not
5 the last one, the one in late February Judge Reinhart did
6 address the docketing of submissions and we would just like to
7 confirm, first of all, whether or not we should continue -- the
8 parties should continue to submit our papers just to the MDL
9 Zantac email address in the first instance, and only docket the
10 submissions if there is a substantive ruling on the dispute.

11 *THE MAGISTRATE JUDGE:* Thank you for pointing that
12 out, Ms. Sharpe, that was in my notes and I breezed right by
13 it.

14 The idea is we are making a record here for either
15 Judge Rosenberg or potentially a higher Court to review, so,
16 anything that the parties submit to me should be filed in the
17 docket. Okay. Even if I ultimately conclude not to reach a
18 ruling, I think it is important. You may appeal that, you may
19 feel I should have reached it, so it is important that Judge
20 Rosenberg and the Court of Appeals knows that.

21 I think the best practice is, when you reach -- if you
22 get to the final point and you really haven't been able to
23 resolve everything and you are 24 hours, 48 hours after the
24 hearing and you are going to submit the memo, it should be
25 simultaneously submitted to the Court and filed.

1 What should not necessarily be filed in the record
2 immediately is anything that has been marked confidential or
3 that otherwise should be kept under seal, and we'll deal with
4 that separately. Again, that needs to be in the record if the
5 Court is going to consider it, or it is going to be submitted
6 to the Court, but obviously, if it has been marked confidential
7 it has to be sealed filed under seal and we have procedures for
8 that.

9 Did I answer your question, Ms. Sharpe?

10 *MS. SHARPE:* Yes, your Honor, thank you. That is very
11 helpful. I do have one corollary question which relates to in
12 camera submissions. I don't know that there have been any thus
13 far, but I do anticipate that there may be.

14 I would expect that with respect to in camera
15 submissions, the direction that your Honor provided about
16 showing the papers to the other side would not apply in that
17 situation, and also, would just like confirmation that if there
18 is an in camera submission, that that should only go to the
19 Court via the email address, and that opposing counsel will not
20 be copied on that missive.

21 *THE MAGISTRATE JUDGE:* Yes, thank you, also an
22 excellent question. Correct. First of all, a couple of
23 things.

24 Obviously, if there is an in camera submission you
25 don't need to show it to the other side. That is the whole

1 purpose of an in camera submission. When you do get around to
2 submitting it to the Court, you don't want to send it to an
3 email box that the other side can see. You don't need to copy
4 them. That is understood and perfectly acceptable.

5 My personal caveat, though, on in camera submissions
6 is, generally speaking, don't submit anything in camera until
7 the Court agrees to accept an in camera submission. The
8 parties shouldn't unilaterally just submit something and say we
9 are submitting it in camera, because really because in camera
10 is an ex parte proceeding it is the exception to the rule.

11 I have had occasions where the parties say, well, we
12 want to submit this in camera, and I decline to accept an in
13 camera submission either because they want to submit 11,000
14 pages of discovery, and they expect me to go through every
15 single page, or because it is something that I do not feel is
16 appropriate for an in camera submission.

17 So, you can certainly raise that issue if you think it
18 is going to be important prior to the hearing, that the Court
19 had considered it, and perhaps the other side agrees. Maybe it
20 is a privilege question and the other side agrees it would be
21 helpful for the Court to see it in camera ahead of time.

22 You can indicate that in the cover email that you send
23 with the submission, and you will get a quick response
24 back saying go ahead and please submit the in camera documents,
25 but I would just say don't reflexively file anything in camera

1 without asking the Court.

2 *MS. SHARPE:* Thank you, your Honor, that is very
3 helpful. I appreciate it.

4 *THE MAGISTRATE JUDGE:* Anything else, Ms. Sharpe?

5 *MS. SHARPE:* No, that is it for me.

6 *THE MAGISTRATE JUDGE:* All right. Mr. Kaplan, you're
7 next on my screen, so I am going to call on you next.

8 *MR. KAPLAN:* Good morning, your Honor, Andrew Kaplan
9 for Cardinal Health Inc. and appearing today as liaison for
10 distributors. Thank you for the helpful discussion of PTO 32,
11 and no further questions on behalf of the distributors today.

12 *THE COURT:* Thank you. Mr. Yoo.

13 *MR. YOO:* Thank you, your Honor. Thomas Yoo for the
14 generics. I didn't have any questions either. Thank you very
15 much.

16 *THE MAGISTRATE JUDGE:* Thank you. Finally,
17 Ms. Johnston.

18 Ms. Johnston, I know you unmuted, but we can't hear
19 you. Try again.

20 *MS. JOHNSTON:* Can you hear me now?

21 *THE MAGISTRATE JUDGE:* Turn your volume up.

22 *MS. JOHNSTON:* I will speak up. Sarah Johnston, for
23 the benefit of Mrs. Stipes, on behalf of the retailer and
24 pharmacy Defendants. No questions at this time, and we
25 appreciate the explanation.

1 *THE MAGISTRATE JUDGE:* Thank you. I think that is
2 everyone on that topic.

3 *THE COURT:* All right. Thank you so much for all
4 counsel appearing and presenting any questions that you had or
5 didn't have, and thank you again, Judge Reinhart.

6 Hopefully with this clarity the process will be able
7 to continue as it has been moving along with respect to PTO 32,
8 but again, if further clarification on a case-by-case basis is
9 needed, it certainly would not be a problem for Judge Reinhart
10 or for I to give that charity. It is important that everybody
11 understand the process. There are a lot of PTOs entered in
12 this case and the process is important, understanding it, and
13 is the key to being able to move forward.

14 We will keep this on the agenda as long as it needs to
15 be addressed at each forthcoming discovery conference.

16 With that, if we could turn to Ms. Luhana. I know
17 that in the past you have given the Court and others who have
18 been participating a very helpful summary with statistics or
19 otherwise as to where discovery is.

20 There has been a lot going on in terms of production
21 of documents, depositions that have occurred, that will be
22 occurring, the coordination of scheduling of depositions, so I
23 would really like to turn it over to you to give as
24 comprehensive an overview of how you see the state of discovery
25 is at this point.

1 Then, if I could perhaps add, after you have given the
2 overview, if Mr. Petrosinelli would like to turn his screen on
3 to make any comments as well, you can do that as well. This
4 way we can hear from Mr. Petrosinelli in his role as
5 coordinating counsel on behalf of all Defendants, although
6 representing Pfizer, and then Ms. Luhana on behalf of the
7 Plaintiffs. So, thank you.

8 *MS. LUHANA:* Good afternoon, Judge Rosenberg and
9 Magistrate Reinhart, Roopal Luhana of Chaffin Luhana for the
10 Plaintiffs.

11 Judges, I am going to give the Court a brief update on
12 the status of discovery for the brand Defendants as well as the
13 generic manufacturers. To date, approximately 450,000
14 documents have been produced, with about 400,000 documents of
15 those being produced by the brands. About 190,000 custodial
16 documents have been produced, and about 210,000 noncustodial
17 documents have been produced.

18 So, I am going to break out the discussion into the
19 status in noncustodial productions, then touch on first tranche
20 of custodial productions, and lastly depositions and the status
21 of the second tranche of custodial files.

22 So, as to the noncustodial productions, the
23 noncustodial productions for all the brand manufacturers are
24 ongoing. We are continuing to receive regulatory documents,
25 stability testing and other testing documents, manufacturing

1 documents, SOP documents, as well as share point files from the
2 brands.

3 Some of the issues that have arisen for some of the
4 brands in completing -- there are some issues that have arisen
5 for some of the brands in completing their noncustodial
6 productions, and that includes, for example, with BI, due to
7 the COVID restrictions at their Promeco, Mexico facility and
8 the substantial volume of hard copy documents, it may take them
9 approximately four to five months for BI to produce these
10 documents.

11 Promeco is their manufacturing facility and has highly
12 relevant manufacturing documents which cover a large span of
13 time being that BI manufactured Zantac for itself, for Sanofi,
14 and for others for the last ten to 15 years. We are working
15 with counsel and the special master to address this.

16 GSK is still in the process of producing what we
17 believe to be the largest part of their noncustodial production
18 to be. We believe the remaining documents are qualitatively
19 important and are heavily science driven, and that includes the
20 regulatory documents with the FDA, their pharmacovigilance
21 documents that are going to be produced, including, for
22 example, underlying source files for adverse events related to
23 cancer.

24 There are also preclinical and clinical studies,
25 including thousands of underlying study documents and lab

1 notebooks that are going to be produced. There is also supply
2 chain documents, including manufacturing documents. So, we are
3 having ongoing meet and confers with GSK and the special master
4 to determine the production size and production dates.

5 For Sanofi, they have produced half of their
6 noncustodial documents this year after the PTO 47 deadline. We
7 just received their amended and supplemental discovery
8 responses this week and we are currently evaluating them to see
9 if they raise any issues.

10 As for Pfizer, they have represented that their
11 noncustodial productions are substantially complete.

12 Now, turning to the custodial files, at least tranche
13 one custodial files, currently three out of the four brand
14 manufacturers are still completing and updating their first
15 tranche of custodial files.

16 Moving on to depositions, where they stand, there are
17 a total of six 30(b)(6) depositions that have been taken for
18 the brands. We have had to cancel a number of depositions that
19 were scheduled in December, January, and February due to
20 document production issues.

21 For the brand manufacturers, there are 16 depositions
22 that have been scheduled largely for April and May; however we
23 have 59 depositions that still remain to be scheduled with the
24 brands per PTO 54. These depositions will be scheduled as we
25 receive additional custodial files and we can review them and

1 then ultimately assess an employee's position and role as it
2 relates to Zantac.

3 For the generic manufacturers, per PTO 60, 71
4 depositions have been scheduled for April, May, and June. We
5 are pretty much doing two depositions a day; however there are
6 exceptions where we are going to be doing three depositions a
7 day.

8 As far as the custodial files for tranche two, we are
9 currently in the process of negotiating the numbers, the timing
10 of tranche two custodial files with the brand manufacturers.

11 For Pfizer, we have finalized our tranche two list and
12 Pfizer is going to be producing those documents by April 30th.

13 For BI, we are finalizing the tranche two list, but an
14 initial set of tranche two custodial files have been produced
15 for custodians BI has specifically chosen.

16 For GSK, we have a working tranche two list, but
17 haven't finalized a production date or the list yet and are
18 meeting and conferring with them about it.

19 Lastly, for Sanofi, we have requested information for
20 certain employees that Sanofi has represented to us that
21 weren't impacted by the email recovery issues, so we are
22 awaiting that information. Once we receive it, we can proceed
23 with selecting Sanofi's tranche two custodians.

24 Lastly, I just want to touch on one point about the
25 registry data.

1 There are currently approximately 83,000 claimants in
2 the registry alleging one of the ten cancers disclosed on
3 January 8th, and the large majority of these claimants have no
4 CPF deficiencies or noncritical CPF deficiencies.

5 Judges, I hope that provides a sufficient update for
6 the Court on discovery, and I am happy to address any questions
7 you may have.

8 *THE MAGISTRATE JUDGE:* I don't have any questions.
9 Judge Rosenberg.

10 *THE COURT:* No, no questions.

11 Did you want to hear from Mr. Petrosinelli first, and
12 then any comments?

13 *THE MAGISTRATE JUDGE:* Yes.

14 *THE COURT:* Okay. Great. Thank you.

15 *MR. PETROSINELLI:* Good afternoon, your Honors, Joe
16 Petrosinelli for Pfizer, but here speaking on behalf -- at
17 least on a general level on behalf of the Defendants.

18 I don't have anything specific to add. I certainly
19 can't speak specifically for any Defendant, and if there is any
20 Defendant who wants to speak about their production status,
21 they can jump on.

22 At a broad level what you just heard is that there is
23 a ton of work going on, and the Defendants collectively are
24 working quite diligently under, in some circumstances, pretty
25 trying circumstances with COVID and the remote working

1 environment and the hard copy documents because of the time
2 period during which this product has been manufactured.

3 So, I don't really have anything to add specifically,
4 other than I know that, as Ms. Luhana said, dozens and dozens
5 literally of depositions are in the process of being scheduled
6 over the next 60 to 90 days, and I am sure the document
7 productions, as she has described, will continue to come in,
8 and I just want to let the Court know that everyone is working
9 diligently towards trying to complete the productions and get
10 these depositions on the calendar as expeditiously as we can.

11 *THE MAGISTRATE JUDGE:* Thank you. Thank you to both
12 of you, it's very helpful, and clearly a lot of documents and a
13 lot of work going on, so thank you.

14 A couple of thoughts I did want to share. One is, and
15 I think we all recognize this, the sequencing of discovery is
16 very important. We sort of work backwards. In order to take a
17 meaningful deposition you have to get certain evidence
18 sufficiently in advance of the deposition to prepare on both
19 sides, to prepare your witness and also to prepare to question
20 the witness, so there has to be production prior to deposition.

21 We talked the other day at another hearing, that is
22 why the ESI protocols are so important, because until you have
23 the ESI protocols in place you can't do the ESI production, you
24 can't prepare for depositions that rely on ESI documents.

25 I want the parties to be mindful that any slippage in

1 those sorts of deadlines or agreements causes potential delays
2 in the depositions, as you have already double and triple
3 booked depositions, as Ms. Luhana was telling us. I know the
4 parties are mindful of that, but I want them to continue to be
5 mindful of the need to keep the sequencing going.

6 The other thing is, let's not let perfect get in the
7 way of good enough. Discovery is an imperfect process. If we
8 wait to depose everybody on both sides of this case until every
9 single document is disclosed and every single piece of evidence
10 is uncovered this case is never going to go anywhere.

11 There does come a point where the parties just have to
12 go forward, take their deposition based upon the evidence that
13 they have, and if they subsequently get something that really
14 shows they have been prejudiced, there are remedies available
15 from the Court.

16 I caution both sides in their planning to please not
17 wait until the very last minute, wait for the last document,
18 and then jump in. Let's understand these things have to move
19 in an orderly fashion. Clearly I am not prejudging anything,
20 but my general sense is there is not one smoking gun document
21 buried somewhere in somebody's file that turns this case on its
22 head and that isn't going to be produced.

23 At the end of the day, if we are fighting about
24 evidence around the margin, understanding it is important, it
25 may be important, but it shouldn't bring the case to a halt.

1 That would just be my request and my admonition to the parties.

2 With that, Judge, I don't have anything further.

3 *THE COURT:* Thank you so much. Were there any other
4 comments or questions?

5 *MS. LUHANA:* None from me, your Honor.

6 *MR. PETROSINELLI:* No thanks, your Honor.

7 *THE COURT:* Thank you so much, I appreciate the
8 update.

9 I concur, there is definitely a lot of work going on.
10 We appreciate it, we recognize it. We are not living it and
11 breathing it in the same ways that you are, but we want you to
12 know that we do understand it and that it isn't always easy for
13 all sorts of reasons, the magnitude of the work, the COVID
14 issues, the hard copy documents, the issues in Mexico.

15 So, we recognize the challenges that you are tackling
16 day in and day out and applaud you for your hard work and for
17 the efforts to keep the case moving forward despite those
18 obstacles. Thank you so much.

19 *MS. LUHANA:* Thank you, Judge.

20 *THE COURT:* Let's see. I will at this point, if there
21 are any of our leads or other counsel who wanted to address
22 anything, there was just one minor matter that I was going to
23 address that was a little off topic, but I will wait one moment
24 to see if anyone's video pops on so as to ensure that everyone
25 has been heard.

1 Ms. Finken, let me turn it over to you.

2 MS. FINKEN: Thank you, your Honor. Tracy Finken
3 again on behalf of the Plaintiffs.

4 There is one issue that we wanted to bring to the
5 Court's attention, and we intend to have a meet and confer and
6 talk to Defendants about it. I suspect that we will be able to
7 work through it, but with so many depositions, as you heard
8 from Ms. Luhana, coming up, we have dozens and dozens of them
9 scheduled, we want to make sure that this is out there for a
10 conversation piece.

11 There is an issue with timing of objections to the
12 deposition notice in advance of the deposition.

13 We don't have really anything in place with the
14 protocol that addresses this, so we are finding that at times
15 the objections come a little bit late in advance of the
16 deposition, which makes it difficult for us to be able to meet
17 and confer and try to resolve those objections before we move
18 forward with the deposition.

19 So, we intend to talk to the Defendants about putting
20 some type of agreement in place in terms of timing of service
21 of those objections in advance of the deposition. We will
22 address that with them moving forward, but we wanted to bring
23 that to your Honor's attention, that that is something that may
24 be coming down the pike.

25 THE MAGISTRATE JUDGE: I appreciate that. I know

1 under our local rule we do have a procedure for that, but I
2 think it is 30 days after the time when the responses were due,
3 which is not going to work in this case. To say if the
4 deposition notice was served on February 9th, that the
5 objections have to come in on April 9th isn't going to work.

6 So I think, Ms. Finken, you raise a good point. I
7 think it would be helpful to the orderly process of this case
8 if we had some deadlines that everyone could work around, but I
9 think you are right, that this is something the parties in the
10 first instance should take a look at and propose.

11 If you need a PTO, the judge is always willing to
12 consider those. If the parties can just reach an agreement,
13 that would be fine. I am in agreement there ought to be some
14 protocol by which the party serving discovery knows that if
15 they are going to get an objection, they have gotten it
16 already, and you don't get an objection the day before the
17 deposition was noticed even though the other party had 90 days
18 of notice.

19 I hear you, I think it is a valid point, and I think
20 the parties should try to work through it themselves.

21 *MS. FINKEN:* Thank you, your Honor. As you know, 30
22 days in this case is a lifetime, a lot can happen, so I
23 appreciate that guidance.

24 One other issue that I just wanted to raise briefly
25 is, there is a provision currently in PTO 54 -- and this goes

1 to your Honor's point about plowing forward with depositions
2 whether or not we have the documents that we need. There is a
3 provision in PTO 54 as it currently stands that if we are aware
4 that documents pertinent to a specific custodian have not been
5 produced in advance of the deposition and move forward, we
6 waive the right to redepose that witness on those issues.

7 In light of the time constraints that we have and your
8 Honor's guidance on these issues, I just wanted to raise this
9 point as we may need to revisit some of the language in PTO 54
10 as it applies to that so that we can follow the guidance of the
11 Court without prejudicing ourselves under PTO 54.

12 *THE MAGISTRATE JUDGE:* Again, I think that provision
13 was put into PTO 54, it seems like a lifetime ago, probably
14 only a month or so ago. I don't have an intuition, Ms. Finken,
15 whether this is a recurrent problem, whether it is just being
16 good lawyers and trying to get ahead of a problem before it
17 happens, or whether it is going to be an acute issue going
18 forward.

19 Again, I would encourage the parties to talk about it.
20 I know Judge Rosenberg entered an order a week or so ago that
21 gave me some authority to modify deadlines and set deadlines
22 within the parameters of PTO 54. If that is creating problems,
23 or if the problem is they are waiting until the last minute,
24 then they are giving us information that requires us to either
25 cancel our depo, which we can't do because we are stacked up

1 until kingdom come, or we have to, in the exercise of our
2 professional judgment, call it off, but then -- we have to go
3 forward because we can't afford to put it off, yet we have to
4 pay for the second depo, I can see the tension there, and that
5 is certainly something the parties should try to work through,
6 and if you need an order from the Court, we can discuss that.

7 *MS. FINKEN:* Thank you, your Honor.

8 *THE MAGISTRATE JUDGE:* Am I correctly reading what
9 your concerns are?

10 *MS. FINKEN:* Yes. There have been production issues
11 which we have discussed with your Honor previously at the
12 discovery hearings as well as the case management conferences.
13 Whether it will be a continuing issue moving forward, that is
14 hard to say.

15 We do intend to move forward with depositions as we
16 schedule them and not take them down based on production issues
17 moving forward. I just wanted to make sure that it was out
18 there that PTO 54 actually creates a waiver of our rights in
19 terms of taking a second deposition. I wanted to address that
20 up front so that we don't have problems down the line if we do
21 intend to move forward and keep the case moving without the
22 documents.

23 *THE MAGISTRATE JUDGE:* I understand. As you all know,
24 the Court doesn't like to revisit its PTOs without a lot of
25 thought and a lot of input from the parties and the special

1 master, and also giving the Court sufficient time to really
2 reflect on the issues presented. If that issue needs to be
3 framed, if it becomes a recurring issue that needs to be framed
4 for action by the Court, there are different procedures to do
5 that and we will wait for the parties to do that.

6 *MS. FINKEN:* Thank you, your Honor. We will talk to
7 Defendants about it. Thank you, I appreciate that.

8 *THE MAGISTRATE JUDGE:* Sure.

9 *THE COURT:* Thank you, Ms. Finken. PTO 54 was entered
10 back in November, and as Ms. Finken says, even 30 days can seem
11 like a lifetime, maybe even a week can seem like a lifetime in
12 Zantac, so November could seem like literally two lifetimes
13 ago.

14 Judge Reinhart is correct insofar as kind of a
15 reluctance, I suppose -- I didn't hear Ms. Finken asking for
16 any amendment per se to the PTO, in this moment at least,
17 without thought and conferring because the parties have been so
18 terrific about meeting and conferring and agreeing on most
19 everything, but when they don't, we step in and try to use our
20 best judgment to break the log jam, so to speak, and resolve
21 the dispute.

22 I did want to say that the case has evolved,
23 unexpected developments have occurred. That is to be expected
24 in a case of this magnitude over the duration of time that we
25 have covered thus far. We have covered so much ground. If in

1 fact there is the need, whether it is PTO 54 or any other PTO,
2 to modify it, amend it, or to have a new PTO issued to better
3 adapt to the nature of the case as it exists today and not back
4 in November, or a year from now, of course the Court is
5 receptive to that.

6 The PTOs are meant to work and facilitate what the
7 parties are doing. They were by large part jointly agreed to.
8 The Court, of course, reviewed them, overlooked the process and
9 amended them as the Court deemed necessary, but has been very
10 solicitous of the input of the parties because the parties have
11 so much experience through lead counsel, have worked so well
12 and cooperatively together that the Court has a great deal of
13 trust in what you have presented to the Court for purposes of
14 entering these PTOs.

15 But it is not to say that a PTO that governs the
16 procedures by which you were doing things a little while ago,
17 but because of unforeseen circumstances has changed, that
18 either it can't be amended or the parties can find other ways
19 to make the process work because, at the end of the day, that
20 is really what Judge Reinhart and I are here to do.

21 We are here to issue rulings that are sound rulings,
22 that are hopefully good rulings that are based in law and fact,
23 as we should do. So, that is one part of our job, an important
24 part, and also to manage the case and to ensure that it keeps
25 moving forward.

1 We are not doing the work for you, you are doing the
2 heavy lifting, so you are feeling the challenges and the
3 hardships in ways that are different from what we are feeling,
4 but we do have a responsibility under the rules, as MDL
5 transferee judges and just in our judicial obligations and
6 responsibilities, to make sure that the case moves forward,
7 that is managed in a proper way, and for all intents and
8 purposes stays on track in the confines and contours of the
9 schedule that the parties have put together as their vision,
10 and shared by the Court, for how the case moves forward.

11 So, I completely concur with Judge Reinhart in terms
12 of sort of finding ways to be practical about keeping things
13 moving forward. It is not always going to be a perfect
14 terrain. I don't know that Plaintiffs can ever feel one
15 hundred percent certain that they have everything at the moment
16 that they have conducted a deposition and where that tipping
17 balance is as to whether the deposition goes forward or not, in
18 light of the failure to produce or notice of a lack of
19 documents.

20 That is for another day, after a meet and confer and a
21 crystallization of exactly what the issue is, because as
22 judges, we like to rule on issues, but try to use these
23 conferences more for general guidance, which hopefully we are
24 giving.

25 So, it is always helpful, as Ms. Finken has done and

1 others, to alert the Court to issues so it is on our radar, and
2 so when the issue gets crystallized with a real life example
3 of, gee, we didn't get these documents within a certain period
4 of time, but we don't want to let the depo fall off because we
5 have 50 more in the next few weeks, it is that balance that we
6 are always trying to keep day by day, week by week. We are
7 trying to do it as judges and we ask that you try to do it as
8 lawyers.

9 The Defendants have as much incentive as the
10 Plaintiffs to keep the train moving and the only way the train
11 is going to be moving for the Plaintiffs to be able to do what
12 they need to do in taking the depositions is, as Judge Reinhart
13 says, they need the documents. They need the documents to take
14 the depos, they need to know what they don't have, and need to
15 know whether it makes sense to take the depo even in light of
16 not having everything, knowing that they may need another
17 opportunity to take the depo because that depo falls off, they
18 have 50 more down the pike, and once those start getting
19 rescheduled or canceled, it is going to be hard to meet the
20 deadline.

21 I know the Defendants want the deadline to be met.
22 They are equally a part of the PTO process that put the
23 schedule in place, but you can't tie the hands of the Court.
24 You need to do what you need to do so the Plaintiffs can do
25 what they need to do and vice versa. The Plaintiffs need to do

1 what they need to do so the Defendants can do what they need to
2 do to know what the issues are at the end of the day when
3 discovery closes, when expert reports are due, when Daubert
4 rulings come in.

5 The smoother it runs, the better the briefing, the
6 better position the Court is to make the right rulings with the
7 right record. Nobody wants a judge to make a ruling on an
8 incomplete record. Nobody wants to feel that they didn't get
9 all of their information, relevant information into the record
10 for the Court to consider. That is just a nonstarter.

11 We have come too far, we have worked too hard, too
12 many resources have been put into this case to hamstring
13 anyone, Plaintiffs, Defendants, or the Court, in being able to
14 do the job in the best way that we can do it. It is a
15 partnership. I have said that each and every time we have met.
16 We are all in it together and we all need to work together to
17 make sure we can do our jobs. Even though we have different
18 roles, we have a common goal, and that is to allow each other
19 to do our jobs.

20 With that, I am going to pivot ever so slightly to a
21 topic that is not really discovery related, but I think that
22 concludes the discovery matters that I understood to be a part
23 of today's agenda. Since we have you here today, particularly
24 those of you who are actively involved in the upcoming briefing
25 of the Motions to Dismiss, I wanted to the use the opportunity

1 just because it made sense.

2 You have motions that presumably will be coming in,
3 the Defendants, on or about March 24th, unless we get them in
4 earlier through PTO 61. It has been brought to the Court's
5 attention through the special master that there might be some
6 question in need of clarification of an aspect of the last
7 order of PTO 61 that the Court entered.

8 I typically would wait for a motion for clarification
9 and let it brief out, but in the interest of time and ensuring
10 that there is great clarity on what the Court intended and what
11 the expectations are -- and it is slightly different, just like
12 the order itself is different than the original order that
13 governed the first round of PTOs -- the first round of MTDs in
14 that PTO.

15 There are some similarities, but there are some
16 differences now that the Court has been through this once
17 before and maybe has learned some things, some things that
18 worked well, others that the Court thinks maybe can be improved
19 upon and, as always, sought the input from counsel.

20 With respect to the aspect of PTO 61, page four, where
21 the Court indicated that "the motion shall not incorporate by
22 reference briefings from any prior motions, nor shall the
23 motions incorporate by reference briefing in other motions
24 filed in this round of motions," I think that was the question
25 that the parties sought clarity.

1 That does mean what it says. I think it is clear, but
2 I think maybe the confusion was that is not what we did last
3 time and that is not what maybe anybody explicitly asked for in
4 so many words.

5 So, it does mean no incorporation by reference to
6 prior motions, meaning the first rounds of MTDs and responses,
7 and/or in this current round of briefing.

8 For example, I know in the last round the retailer
9 motions did incorporate by reference aspects of a number of
10 other motions that were filed.

11 I know that the distributor motion also incorporated
12 by reference aspects of other Motions to Dismiss arguments that
13 were contained in other briefs, and the generic motion did as
14 well, as did arguments made by the repackagers. The brand
15 motion, to my recollection, did not.

16 And so, the Court felt that with ten, maybe eleven
17 motions that were being filed with the page limits that were
18 being requested -- now, maybe those page limits were being
19 requested on the premise that there was going to be
20 incorporation by reference, so I understand that maybe the page
21 limit request might have been different.

22 The bottom line is this: The Court wants to receive
23 the information, obviously, in as efficient and streamlined a
24 manner as possible. The Court wants to make your job doable
25 and devised a structure that tried to accommodate the interests

1 of the Plaintiffs and the Defendants in terms of what needed to
2 be presented, how it should be presented, how it was really
3 humanly possible for the briefing teams to be able to do what
4 they need to do. Then, at the end of the day, the Court
5 reminded the parties that the Court had its resources and what
6 it needs to get done within the timeframe that it believes it
7 should get its rulings done.

8 So, the Court calculated all of that and felt that the
9 job could get done with without the incorporation of reference
10 to motions that were filed in this round by other parties.

11 Now, if the Court was misguided in that and that
12 somehow is going to fundamentally shortchange a Defendant or a
13 group of Defendants to be able to do what they need to do to
14 get all of their arguments sufficiently before the Court, that
15 is not the Court's intent nor the Court's desire.

16 The Court does want the parties to drill down. It is
17 a lot easier just to say I incorporate by reference pages three
18 through 33 of this other motion, and not necessarily distill
19 down exactly what you mean by that.

20 That puts, quite frankly, a heavy burden on the Court
21 to distill, well, what aspect of pages three to 33 do you
22 really mean applies to a certain set of Defendants.

23 I will say this: The order is what it says, it means
24 no incorporation. However, as you are preparing your motions,
25 and I know you are in the throes of it, they are due in a few

1 weeks, if any group of Defendants finds that there is a
2 discrete and very particularized aspect of what another group
3 of Defendants is briefing that would be duplicative because the
4 other group of Defendants is going to be saying the exact same
5 thing, no different, it's the exact same argument, the same law
6 you are relying upon, and furthermore, in the 20 pages you are
7 allotted, or the 25 pages you are allotted, to have to
8 duplicate that work is going to be to the detriment of you in
9 being able to put forth independent arguments that are unique
10 to that group of Defendants, then by all means, let the Court
11 know.

12 How do you let the Court know? You file a very short
13 motion, you meet and confer with the other side, and hopefully
14 you will explain it well enough to the Plaintiff that the
15 Plaintiff won't feel that it is a sandbag, that it is
16 overwhelming, that you are just trying to get around page
17 limits, but it is a very precise way that you are explaining in
18 terms of why you need a very particularized incorporation by
19 reference of another motion.

20 It does require the Defendants to be talking to know
21 what each other is putting forth, but I think that is good,
22 because at the end of the day, I am getting ten or eleven
23 different motions. They shouldn't all be saying the same
24 thing.

25 I will remind everybody that two of the motions, the

1 omnibus motions, are by all Defendants. So, that is an
2 opportunity for all Defendants to get all catchall arguments
3 in, as it has been explained to the Court, and in turn, the
4 Court issuing its order on the two omnibuses. All Defendants,
5 pleading issues, failure to state a claim, if they're shotgun.
6 Already the other groupings of Defendants have that ability
7 because they are part -- to make those arguments because those
8 omnibus motions are being filed by them as well.

9 I am assuming it may go to other issues like
10 preemption. If there is a discrete aspect of a preemption
11 motion filed by one group that another group wants incorporated
12 by reference, by very particularized, you know, requesting of
13 it and why it can't be done otherwise in the page limit that
14 you have been given, by all means, let the Court know. Short
15 simple motion, meet and confer, file it, and the Court will
16 turn around and respond right away.

17 The Court just wants to understand, so it is going to
18 require a little more work on your part to really know that you
19 need it, and why you need it, and explain it to the Court and
20 explain it to the other side, but I end with where I began,
21 which is that nobody wants the Court making a ruling on motions
22 that could not have been fully briefed out.

23 I don't want you to have to shortchange what you need
24 to say, but I want you to be disciplined about what you are
25 saying so that what you say matters and what the Court rules on

1 are the issues that you needed the Court to rule on.

2 Eleven motions are a lot. If you count the pages,
3 there are a lot of pages. The complaints are big, I have
4 plenty of work to do, and I want to make sure our time is used
5 in the most efficient way to ultimately benefit you, to get
6 correct rulings and to get prompt rulings for you.

7 That was my thinking in why that order went out the
8 way it did. Hopefully that explains it, and I again wanted to
9 use the opportunity in a somewhat unconventional way to mention
10 it since it was brought to my attention through the special
11 master, and given I have you here, it just seemed like a very
12 expedient and efficient way to do so.

13 With that, I will ask Judge Reinhart if there are any
14 further comments that you have. If not, as always, we thank
15 everyone for their leadership, their hard work, and always want
16 to wish well to everybody during this ongoing COVID pandemic.
17 Hopefully people have been able to remain as safe as possible,
18 and for those who are eligible and desirous of getting
19 vaccines, that they are doing so, and sooner rather than later
20 we will have a new platform by which we can communicate and
21 conduct our hearings and hopefully meet you in person at the
22 appropriate and safe time.

23 *THE MAGISTRATE JUDGE:* Judge, I have no other comments
24 other than, to the extent the next gen people are on the call,
25 it was a joy to do the brown bag that we did with the next gen

1 people, and I look forward to doing another one of those.

2 *THE COURT:* Yes, that is definitely something I would
3 like to do as well. We did get wonderful feedback, so we will
4 revisit that with our special master to make sure that we find
5 an appropriate time that everyone is comfortable with that we
6 can convene another brown bag lunch. Thank you for reminding
7 me of that because I don't think we have had a chance to all
8 speak publicly since then.

9 So, with that, thank you and we will conclude the
10 status conference for the day.

11 Bye-bye.

12 *(Thereupon, the hearing was concluded.)*

13 * * *

14 I certify that the foregoing is a correct transcript
15 from the record of proceedings in the above matter.

16
17 Date: March 11, 2021

18 /s/ Pauline A. Stipes, Official Federal Reporter

19 Signature of Court Reporter
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